

*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.16804 of 1994

%16.6.2004

£Visakha Public Telephone Attendants Welfare Association,
Visakhapatnam, represented by its Secretary Shri T.Ch.Bhupathi.

...Petitioner

Vs.

- \$1. The Commissioner of Labour, Andhra Pradesh, Hyderabad.
- 2. The Deputy Commissioner of Labour, Visakhapatnam.
- 3. The District Labour Officer, Visakhapatnam.

... Respondents

!For the petitioner ...Mr. A. Venkata Ramana

Mr. D.V.S.R. Murthy

^For the Respondents-1 to 3 ...G.P.FOR LABOUR

<Gist:

>Head Notes:

? Cases Referred

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

FRIDAY, THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 16804 of 1994

Between:

Visakha Public Telephone Attendants

Welfare Association, Visakhapatnam

represented by its Secretary Shri T.Ch.Bhupathi.

..... PETITIONER

AND

1 The Commissioner of Labour,

Andhra Pradesh, Hyderabad.

2 The Deputy Commissioner of Labour

Andhra Pradesh, Hyderabad.

3 The District Labour Officer,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus to declare that the members of the petitioner Association i.e., Public Telephone Attendants are not governed by the provisions of the A.P. Shops and Establishment Act.

Counsel for the Petitioner : MR. A. VENKATA RAMANA

MR.D.V.S.R. MURTHY

Counsel for the Respondent Nos.1 to 3 : GP FOR LABOUR

The Court made the following :

ORDER:

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A short but interesting question arises for consideration in this writ petition filed by Visakha Public Telephone Attendants Welfare Association, Visakhapatnam ('Association' for brevity). Whether STD Public Telephone Booth Agent is required to get registered under Section 3(1) of A.P. Shops & Establishments Act, 1988 ('the Act' for short) when such Agent is only running the Telephone Booth on behalf of the Department of Telecommunications, Government of India, and holds moneys collected in trust? Before considering the question, it would be necessary to refer to the facts albeit in brief – as disclosed in the affidavit accompanying the writ petition as well as, to some extent admitted in the counter affidavit filed on behalf of the

respondents.

Members of the petitioner association were appointed as STD Public Telephone Agents in the city of Visakhapatnam. They were required to execute agreement for provision of STD booth. The agreement is valid for one year. Clause 15 of the said agreement stipulates that every agent has to agree to give a guarantee of assured PT calls worth of Rs.1,600/- and also give security deposit of Rs.9,600/- as a guarantee money. Clause 33 takes care of the payment to be made by the Department of Telecommunications to agents and reads as under:

“That the STD PT agent is entitled to charge from the public Re.1/- per unit and he take will be permitted to claim 20 paise per unit upto 10,000 units, 10 paise for next units the total calls made in a month. This commission should not be charged and collected from the customer. The STD PT agent should claim for commission payable by the STD PT agent should not be deducted due to him every month on the form prescribed by the Department. The commission payable to the STD PT agent should not be deducted by the STD PT agent at first instance Commission due and payable the STD PT agent will be passed and paid by the Accounts Officer (TR), Telecom District Manager, Visakhapatnam on monthly basis as per exchange meter readings only. The Department shall have liberty and reserves its right to deduct at source all the taxes, ratio, fees etc., due if any to State or Central Governments, Local Bodies etc., under law.”

A telephone booth agent is not permitted to fix the call rate charges as he wishes and he is bound to collect the call charges as stipulated in clause 50, and clause 38 lays down that STD PT call charges realized from the public callers are Government moneys and are held in trust by the STD PT agent on behalf of the Department until the moneys are credited to the Government account and a valid receipt obtained therefor.

It is the grievance of the petitioner association that the Officials Assistant Labour Officer issued notices to some of the members calling upon them to produce particulars of registration under Section 3 (1) of the Act. Penal action was initiated against some of the members, for non-production of certificates, on the file of V Additional Metropolitan Munsif Magistrate, Visakhapatnam by filing Summary Trial Cases. Therefore the present writ petition is filed praying for declaration that the members of the petitioner association are not governed by the provisions of the Act.

This Court while admitting the writ petition on 22.9.1994 directed the respondents not to initiate any action against the members of the petitioner association for non-compliance with the provisions of the Act. The respondents have filed counter affidavit opposing the writ petition. The Deputy Commissioner of Labour, Visakhapatnam in the counter affidavit states that a telephone booth is rendering service to the customers for commission/remuneration, which is profitable, and therefore it comes within the definition of “Establishment”. Therefore the Assistant Labour Officer, VII Circle, Visakhapatnam issued show cause notices to Public Telephone Attendants directing compliance with the provisions of the Act. When they failed to do so, Criminal Cases were filed before V Additional Metropolitan Munsif Magistrate, Visakhapatnam. It is further stated that all the members of the petitioner association are not only running a telephone booth but

they are having billing machines, fax, telex and also employed other persons paying wages. Therefore, they are “Commercial Establishments” within the meaning of the Act.

I have heard the learned counsel for the petitioner and learned Government Pleader for Labour, who reiterated the contentions raised in their respective pleadings.

Sections 2 (5), 2 (10) and 2 (21) of the Act, which defined “Commercial Establishment”, “Establishment” and “Shop” respectively, are relevant and they read as under:

Section 2 (5):

‘Commercial Establishment’ means an establishment which carries on any trade, business, profession or any work in connection with or incidental or ancillary to any such trade, business or profession or which is a clerical department of a factory or an industrial undertaking or which is a commercial or trading or banking or insurance establishment and includes an establishment under the management and control of a co-operative society, an establishment of a factory or an industrial undertaking which falls outside the scope of the Factories Act, 1948 (Central Act 63 of 1948), and such other establishment as the Government may, by notification, declare to be a commercial establishment for the purposes of this Act but does not include a shop;

Section 2 (10):

‘Establishment’ means a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act;

Section 2 (21):

‘Shop’ means any premises where any trade or business is carried on or where services are rendered to customers and includes a shop run by a co-operative society, an office, a store room, godown, warehouse or work place whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification declare to be a shop for the purposes of this Act, but does not include a commercial establishment.

Another provision to which a reference has to be made is Section 73, which deals with exemptions from the provisions of the Act. The same reads as under:

Section 73 Exemptions :

1. Nothing in this Act shall apply to ----

- a. employees in any establishment in a position of management and having control over the affairs of the establishment, whose average monthly wages exceed sixteen hundred rupees;
- b. establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration operating any railway as defined in Clause 20 of Article 66 of the Constitution and Cantonment Authorities;
- c. establishment in mines and oil fields;
- d. establishments in bazaars in places where fairs or festivals are held temporarily for a period not exceeding one month at a time.

2. Nothing in Section 7 or 15, as the case may be, shall apply to –

- a. hospitals or other institution for treatment or care of the sick, the infirm, the destitute or the mentally unfit;
- b. such chemists and druggists' shops as the Government may, by general or special order, specify;
- c. hair-dressing shops, clubs and residential hotels, educational institutions, hostels attached to schools or colleges and establishments maintained in connection with the boarding and lodging of pupils and resident masters;
- d. stalls and refreshment rooms at railway stations, docks wharves, ports, airports or bus stands;
- e. establishments wholly or principally engaged in the sale of ice or aerated waters;
- f. establishments wholly or principally engaged in the sale of funeral requisites.

3. Nothing in Sections 7, 9 and 12 or in Section 15 shall apply to --

- a. person whose work is of an intermittent nature such as caretaker, sweeper, traveling staff;
- b. persons employed for loading and unloading of goods at godowns.

4. The Government may, by notification, exempt either permanently or for any specified period, any establishment or class of establishments, or persons or class of persons, from all or any of the provisions of this Act, subject to such conditions as they may deem fit.

5. Notwithstanding anything in the foregoing subsections, the Government may, by notification apply or any of the provisions of this Act to any class of persons or establishments mentioned in those sub-sections other than those mentioned in clause (b) of sub-section (1) and modify or cancel any such notification.

A plain reading of the definitions would show that a shop or a commercial establishment is an “establishment” for the purpose of enforcing the provisions of the Act. If a shop or establishment is a commercial establishment carrying on the trade, business or profession or any work in connection with or incidental with such trade, business or profession not being a factory governed by the provisions of the Factories Act, 1988, such establishment has to obtain a registration under Section 3 (1) and its affairs insofar as employment is concerned are regulated by the provisions of the Act. None-the-less if any establishment is under the Central or State Government, Local Authorities, Reserve Bank of India, or a Railway administration, the same is exempted from the provisions of the Act. As seen from Section 73, a wide variety of establishments and commercial establishments are exempted and nothing under the Act shall apply to them.

A perusal of the agreement between the Telephone booth attendant and the Department of Telecommunication would show that a person appointed as a Telephone booth attendant acts as an agent having immediate control over the Telephone instruments and rendering the day-to-day service of providing the facility of telephones to the customers. The money collected is the money of the Government of India and on day-to-day basis, a Telephone booth agent has to deposit the amount to the Department of Telecommunication, and such Telephone booth agent is only entitled for a commission in accordance with Clause 33 of the Agreement at 20 paise per unit upto 10,000 units and 10 paise per unit exceeding 10,000 units. The mere fact that the STD PT agent has to give a guarantee of assured PT calls worth Rs.1,600/- does not change the nature of telephone booth notwithstanding the fact that the premises where a telephone booth is located belongs to such Telephone booth agent either on ownership basis or lease basis.

Therefore, I see force in the submission of the learned counsel for the petitioner that a telephone booth simplicitor cannot be considered as a shop or as a commercial establishment and therefore cannot be an “Establishment” within the meaning of subsection (10) of Section 2 of the Act.

What would be the nature of a telephone booth, which besides providing telephone facility to public also has other facilities like Internet service, Fax machine, Tea/Coffee vending machines and other Telecommunication services. The agreement entered into between the Department of Telecommunication and STD PT agent speaks of a telephone facility in a booth. It has no application if a Telephone booth agent on his own – presumably to augment the income; establishes and provides other facilities some of which are mentioned herein above. In such an event, the preponderance of capacity of such a Telephone booth agent/Telephone attendant would not only be acting as an agent of Department of Telecommunication, Government of India but a business vendor. Going by the definition of Commercial establishment/Shop such a telephone booth would certainly come within the definition of “Establishment” and therefore requires registration under Section 3 (1) of the Act. A categorical averment is made in the counter affidavit of the Deputy Commissioner that some of the members of the petitioner association are employing other persons on wages to run the establishment. This has not been denied by filing a reply affidavit and therefore there is no reason not to accept the submission of the respondents.

In the result, though no relief can be granted to the petitioner or its members, it is made clear that as long as the members of the petitioner association carry on the activity of running only telephone booth, they are not required to obtain registration under Section 3 (1) of the A.P. Shops and Establishments Act, 1988. It is also made clear that if there is any telephone booth providing telephone facility of other telephone companies besides other services, it shall open to the respondents to take the necessary action in accordance with law.

The writ petition, with the above observations, is disposed of. No costs.

V.V.S. RAO, J

Date : July 16, 2004.

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ASSISTANT REGISTRAR

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SECTION OFFICER

To

1 The Commissioner of Labour,

Andhra Pradesh, Hyderabad.

2 The Deputy Commissioner of Labour

Andhra Pradesh, Hyderabad.

3 The District Labour Officer,
Visakhapatnam.

4 Two CCs to the Government Pleader for Labour,

High Court Buildings, Hyderabad (OUT).

5 Two CD copies.